IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT APPEAL NO : 2047 of 2004

Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11/03/2003 in WP NO: 10867 OF 2002 on the file of the High Court.

Between:

Kancerla Subba Rao, S/o. Venkaiah,
R/o. Varahapuram, Vemuru Mandal of Guntur District.

..... APPELLANT

AND

The Registrar, Nagarjuna University, Nagarjuna Nagar,
Guntur District.

.....RESPONDENT

Counsel for the Appellant: MR.CHALLA.SRINIVASA REDDY

Counsel for the Respondent: MR.T.S.HARNATH

The Court at the stage of admission made the following:

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ORAL JUDGMENT:

(Per the Hon'ble Sri Justice J.Chelameswar)

Aggrieved by the order dated 11th March 2003 in Writ Petition No.10867 of 2002, of a learned single Judge of this Court, present appeal is filed.

The appellant was initially an employee of the Andhra University working at the then Post Graduate Centre, Guntur, which subsequently became a University by name Nagarjuna University. In view of the change of the employer by virtue of the A.P. Act 43 of 1976, the University protected the service conditions, enabling the employees of the Nagarjuna University, who were earlier in the employment of the Andhra University, to give an option regarding the rules of service, which would govern them. On 31-05-2002, the appellant was intimated that he would retired from service on attaining the age of superannuation with effect from 30th June 2001. Challenging the said communication, the appellant filed Writ Petition No.12742 of 2001. The stand of the appellant was that he was entitled to continue in service till he attained the age of 60 years, and he could not be retired on attaining the age of 58 years. He sought interim orders for his continuance in service.

By order dated 27-06-2001, an interim order, directing continuance of the appellant in service, was passed. But, the appellant withdrew the abovementioned writ petition on
15-04-2002 without getting the issue involved in the writ petition
adjudicated. Thereafter, he sent a letter to the respondent-University on 21-05-2002

intimating his willingness to retire at the age of 58 years, but sought that the service rendered by him after attaining the age of 58 years, i.e. from 01-07-2001 to 31-05-2002, be treated at 'just service'. The respondent-University accepted his first request that he be treated as retired from service on attaining the age of 58 years, but declined to consider the service rendered by him subsequent to 30th June, 2001 as 'just service'.

The respondent-University issued a memorandum dated 31-07-2002 intimating its decision to the appellant and also called upon him to give a clear undertaking that the salary paid to him subsequent to 30th June 2001 would be refunded. Challenging the said memorandum, the present writ petition, from out of which this appeal arises, was filed. The learned single Judge recorded very cogent and elaborate reasons for dismissing the writ petition.

The learned counsel for the appellant made only one submission that in a similar writ petition, by another employee, another learned single Judge of this Court, was pleased to hold that the service rendered by the petitioner therein, would be treated as 'just service'. In fact, a short order was passed in Writ Petition No.13882 of 1999, dated 18th October, 2000, which reads as follows:

> "Learned counsel for the petitioner seeks to withdraw this writ petition. However, learned counsel for the petitioner seeks clarification that the service rendered by the after attaining 58 years may have to be treated as just service for the purpose of payment of salary.
>
> It is brought to my notice by the learned counsel for the petitioner that in similar circumstances W.P.No.9498 of 1992 was directed to be withdrawn by an order dt.12.8.93 clarifying that the service rendered by the petitioner, therein after attaining the age of superannuation will be treated as just service.
>
> With the clarification as above, the writ petition shall stand dismissed as withdrawn. No order as to costs."

It can be seen from the above that the writ petition was dismissed as withdrawn. The issue, whether the petitioner therein was entitled to the treatment of 'just service' or not, was not discussed. In fact, permitting such a plea, as the one the appellant is

advancing, would amount to encouraging dishonest litigants to obtain interim order to suit their convenience, and thereafter, turn back and say that they had rendered service only in pursuance of the interim order. Thus, the appellant never wanted an adjudication of his legal rights and the purpose of the interim order cannot be such as to enable him to take undue advantage by resorting to dishonest means.

Hence, we are of the opinion that the said order does not lay down any principle of law to be followed. The learned counsel for the appellant has not brought to our notice that the judgment under appeal is in any way not in accordance with the settled principles of law.

We do not see any merit in the writ appeal and the same is accordingly dismissed at the stage of admission.

J.Chelameswar, J

Gopala Krishna Tamada, J

20th December, 2004

mrk

To

1. The Registrar, Nagarjuna University, Nagarjuna Nagar,
   Guntur District.
2. Two CD copies.